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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TARA ROSS,

Plaintiff,

Case No.
Hon.

vs.

PROGRESSIVE MARATHON INSURANCE COMPANY,
TENET HEALTHCARE CORPORATION,
a/k/a DETROIT MEDICAL CENTER (DMC),
TENET EMPLOYEE BENEFIT PLAN,
a/k/a DMC CARE HEALTH PLAN,
and TENET BENEFITS ADMINISTRATION COMMITTEE,

Defendants.

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COMPLAINT

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

__/s/ Jeffrey A. Bussell______

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NOW COMES the Plaintiff, TARA ROSS (hereinafter referred to as "ROSS"), by her attorneys, Michigan Auto Law, P.C., and for the Complaint against Defendants, states as follows:

Nature and Action and Jurisdiction

1. This is an action to:

   A. Declare Plaintiff's right to benefits and the priority of coverage under §502(a)(1)(B) of the Employee Retirement Income Security Act (hereinafter referred to as "ERISA"), 29 U.S.C. §1132, and the Michigan No-Fault Act, M.C.L. §500.3101, et. seq.;

   B. Enjoin certain acts and practices and to obtain other appropriate equitable relief under §502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3).

2. This Court has jurisdiction over plaintiff's ERISA claims pursuant to 29 U.S.C §1132(e)(1).

3. This Court has supplemental jurisdiction over plaintiff's claims arising under the Michigan No-Fault Act pursuant to 28 U.S.C. §1367(a).

4. Venue is proper in this district pursuant to 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1391(b).

Parties and General Allegations

5. Plaintiff, ROSS, is a beneficiary of the defendant, TENET EMPLOYEE BENEFIT PLAN, also known as DMC CARE HEALTH PLAN (hereinafter referred to as "PLAN"), through ROSS' husband's employment with TENET HEALTHCARE CORPORATION, also known as the DETROIT MEDICAL CENTER and/or DMC (hereinafter collectively referred to as "TENET"), and is also insured under an automobile insurance policy through PROGRESSIVE MARATHON INSURANCE

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COMPANY, (hereinafter collectively referred to as "PROGRESSIVE"), also providing coverage under the Michigan No-Fault Act.

6. Through her husband's employment with TENET, ROSS is provided with medical insurance benefits through Defendant, TENET.

7. Defendant, PLAN is a self-insured, welfare benefit plan administered under the terms of ERISA for the benefit of TENET employees and their families, including beneficiaries living in Michigan.

8. TENET is the plan sponsor for the PLAN, which is a welfare benefit plan administered under the terms of ERISA for the benefit of TENET employees and their families, including beneficiaries living in Michigan.

9. Defendant, TENET BENEFITS COMMITTEE (hereinafter collectively referred to as the "THE COMMITTEE"), is the claims administrator for the plan, which is a welfare benefit plan administered under the terms of ERISA for the benefit of TENET Employees and their families, including beneficiaries living in Michigan.

10. Defendant, PROGRESSIVE, is a Michigan insurance corporation that provides insurance coverage to Michigan residents under policies sold throughout Michigan.

Factual Background

11. ROSS, was involved in a motor vehicle collision on June 17, 2016, in Hartland Township, Michigan, in which ROSS sustained serious injuries which arose out of the ownership, operation, maintenance and/or use of a motor vehicle as a motor vehicle within the meaning of defendant PROGRESSIVE's insurance policy and the statutory provisions of the Michigan No-Fault Act, being MCLA

500.3101, et. seq.

12. ROSS suffered, amongst other injuries, serious impairment of body function and/or permanent serious disfigurement plus other injuries to the head, neck, shoulders, arms, knees, back, chest and to other parts of her body, externally and internally, and some or all of which interferes with her enjoyment of life and caused the Plaintiff ROSS great pain and suffering.

13. At all material times, ROSS was entitled to health benefits provided by the PLAN in which he was a participant.

14. At all material times, the PLAN was a welfare plan that was administered by the COMMITTEE.

15. At all material times the plaintiff was covered for Michigan No-Fault personal protection insurance (also referred to as "PIP") benefits through an automobile policy of insurance issued by PROGRESSIVE, which provides for payment of all allowable expenses for ROSS' medical care, recovery and rehabilitation in accordance with M.C.L. § 500.3107 and the COMMITTEE was aware or informed or had express/implied knowledge of the PROGRESSIVE coverage.

16. In accordance with the terms of the PLAN, sponsored by TENET and administered by the COMMITTEE, numerous and substantial expenses for ROSS' medical care and treatment, surgery, hospitalization and rehabilitation necessitated by the injuries they suffered in the June 17, 2016, motor vehicle accident were paid by or on behalf of the PLAN, TENET and/or THE COMMITTEE.

17. Under the Michigan No-Fault Act, pursuant to MCL 500.3135, ROSS, is

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specifically prohibited from recovering any medical expenses from the driver and/or owner of the at-fault motor vehicle that caused the June 17, collision in which ROSS was seriously injured.

18. The PLAN, sponsored by TENET and administered by THE COMMITTEE, contains a purported provision requiring ROSS, or those pursuing a legal claim on her behalf, to reimburse the PLAN for any expenses which the PLAN paid to or on behalf of ROSS for any and all June 17, 2016 motor vehicle collision related care and/or treatment expenses out of any legal or other recovery made by or on behalf of ROSS. The purported reimbursement provision is allegedly without qualification and reimbursement is allegedly due notwithstanding the inability of ROSS, or those acting on his behalf, to recover healthcare expenses in the third-party automobile negligence action, due to the limitations imposed by the Michigan No-Fault Act. MCL 500.3135.

19. The PLAN, sponsored by TENET and administered by THE COMMITTEE, also allegedly contains a purported provision giving the PLAN the right of subrogation with respect to any expenses which the PLAN paid to or on behalf of ROSS related to the care and/or treatment of her June 17, 2016 motor vehicle collision related injuries, from any legal or other recovery made by or on behalf of ROSS. The purported reimbursement provision is allegedly without qualification and reimbursement is allegedly due notwithstanding the inability of ROSS, or those acting on his behalf, to recover healthcare expenses in the third-party automobile negligence action, due to limitations imposed by the Michigan No-Fault Act. MCL 500.3135.

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20. The PLAN, sponsored by TENET, and administered by THE COMMITTEE, is silent with respect to any provision expressly creating a "lien" with regard to any claimed overpayment of motor vehicle collision related medical expenses.

21. At all material times, THE COMMITTEE knew that the relevant PLAN did not create a valid and/or enforceable "lien" against a Michigan No-Fault third-party recovery.

22. At all material times, THE COMMITTEE knew that the PLAN did not have a valid and/or enforceable claim for reimbursement of medical expenses against a third-party automobile negligence settlement governed by the Michigan No-Fault Act.

23. At this time, unpaid June 17, 2016, motor vehicle collision related medical expense benefits, as well as additional unpaid personal injury protection benefits including, but not limited to, wage loss and replacement services benefits are due and owing to the Plaintiff by PROGRESSIVE.

COUNT I
DECLARATION OF RIGHTS UNDER ERISA AND MICHIGAN NO-FAULT ACT

24. Plaintiff restates all of the previous allegations as incorporated herein.

25. The terms of the PLAN sponsored by TENET and administered by THE COMMITTEE appears to be conflicting and ambiguous with respect to the duty of the Plan, to pay benefits in the context of a Michigan motor vehicle collision, but resolution of the ambiguity will not result in a valid claim for reimbursement against the plaintiff's third-party automobile negligence recovery.

26. To the extent that there is any other source of fund against which THE COMMITTEE may seek subrogation or reimbursement, it is the

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PROGRESSIVE's PIP policy, which provides coverage for all medical expenses arising from the June 17, 2016, motor vehicle collision.

27. If the "coordination of benefits" language of the Plan, sponsored by TENET and administered by THE COMMITTEE, is enforceable, as initially determined by the administrators of the PLAN, then the PLAN, remains primary in priority and PROGRESSIVE is secondary in priority.

28. If the Plan, sponsored by TENET and administered by THE COMMITTEE, provisions regarding reimbursement/subrogation take precedence, essentially nullifying the "coordination of benefits" terms, then the PLAN may have a right of reimbursement against PROGRESSIVE.

29. To the extent that the PLAN, sponsored by TENET and administered by THE COMMITTEE, has any valid claims of reimbursement of June 17, 2016, motor vehicle collision related medical expenses against the Plaintiff's third-party recovery, then those expenses were not really payable by the Plan, sponsored by TENET and administered by THE COMMITTEE, thus PROGRESSIVE must be deemed primary with respect to payment ROSS' medical claims.

30. Under no circumstances is the Plaintiff, ROSS liable for payment of medical expenses out of any third-party tort recovery, as the Michigan No-Fault Act prohibits a third party tort recovery of medical expenses.

31. Therefore, either the Plan sponsored by TENET and administered by THE COMMITTEE, or the PROGRESSIVE PIP automobile policy, is responsible for paying June 17, 2016 motor vehicle collision related medical expenses incurred by ROSS. Thus, it would be appropriate for the Court to declare respective rights

of the parties in this regard.

WHEREFORE, Plaintiff requests this Honorable Court to declare the rights of the parties regarding Defendants' obligation to pay Plaintiff's June 17, 2016, motor vehicle collision related benefits and determine the priority of coverage under the terms of the Plan, sponsored by TENET, and administered by THE COMMITTEE, the PROGRESSIVE's policy, ERISA and the Michigan No-Fault Act.

COUNT II
INJUNCTIVE RELIEF UNDER §502(a)(e) or ERISA

32. Plaintiff restates all of the previous allegations as incorporated herein.

33. The PLAN, sponsored by TENET and administered by THE COMMITTEE, does not have a valid right of reimbursement, right of subrogation or lien of any kind against Plaintiff or his third-party tort claim, arising from the November 18, 2013 motor vehicle collision.

34. The Plaintiff is a beneficiary of the PLAN, sponsored by TENET and administered by THE COMMITTEE, and is entitled to seek injunctive relief under §502(a)(3) of ERISA to prevent any further wrongful attempts to collect the reimbursement debt allegedly owed to the PLAN, sponsored by TENET and administered by THE COMMITTEE.

35. Therefore, it would be appropriate and equitable for this Court to enjoin the PLAN, sponsored by TENET and administered by THE COMMITTEE, and its contractors and subcontractors, from making any further attempts to collect the alleged reimbursement debt from the Plaintiff.

WHEREFORE, Plaintiff requests this Honorable Court grant a permanent

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injunction against Defendants, prohibit them or their agents, subcontractors or anyone else from making any further attempts to collect the alleged reimbursement debt from the Plaintiff.

COUNT III
NO FAULT BREACH OF CONTRACT CLAIM

36. Plaintiff restates all of the previous allegations as incorporated herein.

37. Defendant, PROGRESSIVE, has a statutory duty that covers Plaintiff, ROSS, under the terms of Public Act No. 294 of the Public Acts of 1972, being commonly known as the Michigan No-Fault Law.

38. As a result of the aforementioned automobile accident, the Plaintiff, ROSS, incurred reasonable and necessary expenses as provided for in the Michigan No-Fault Act, M.C.L.A. 500.3101, et seq.

39. Pursuant to the appropriate statutes, the Plaintiff, ROSS, made application to the Defendant, PROGRESSIVE, through its employees and agents, for payments of the no-fault benefits. That numerous telephone calls and letters were sent to the Defendant for payment of the no-fault benefits specifically provided for under the Michigan No-Fault Law. That said requests for payment were made and verified.

40. The Defendant, PROGRESSIVE, has BREACHED THE CONTRACT and/or ITS STATUTORY DUTY, by neglecting and refusing to pay the no-fault benefits now due and owing to the Plaintiff, ROSS, although said payments have been repeatedly demanded from Defendant, PROGRESSIVE.

41. Pursuant to MCR 2.113(F)(1)(b), as the Defendant, PROGRESSIVE, is in possession of its own terms and conditions, the policy of automobile insurance referred to in this Complaint need not be attached.

WHEREFORE, Plaintiff requests this Honorable Court grant a permanent injunction against Defendants, prohibit them or their agents, subcontractors or anyone else from making any further attempts to collect the alleged reimbursement debt from the Plaintiff.

May 4, 2017

MICHIGAN AUTO LAW, P.C.

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